APPEAL NO. 010086

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 7, 2000, a hearing was held. The hearing officer decided that the appellant (claimant) did not have disability resulting from the compensable injury of _____, in the period beginning August 25, 1999, and ending on August 30, 2000. The claimant appealed, asserting that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. The claimant requests that the Appeals Panel reverse the decision of the hearing officer and remand the case for a determination of whether the respondent (self-insured) has proven that a prior injury was the sole cause of the claimant's inability to obtain and retain employment.

DECISION

The hearing officer's decision and order are affirmed.

We note at the outset that the claimant has attached material to his appeal, and has asserted that an abbreviation in the records is defined as "trapezius muscle." While the claimant may be correct, we decline to accept the documents which are attached in that they are tendered for the first time on appeal, and we likewise decline to accept the claimant's definitions for abbreviations in the medical records for the same reason. We do not generally consider evidence first offered on appeal, and particularly so where it was known and available at the time of the hearing. That is the situation in this case, and no other sound basis is shown for it to be considered at this time. Texas Workers' Compensation Commission Appeal No. 980299, decided April 2, 1998.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In order for the claimant to prove disability, she was required to establish by a preponderance of the evidence that a compensable injury was a cause of her inability to obtain or retain employment at wages equivalent to her preinjury wage. Texas Workers' Compensation Commission Appeal No. 93143, decided April 9, 1993. Only were we to conclude, which we do not in this case, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). We cannot say that the hearing officer was incorrect as a matter of law in finding that the claimant failed to meet this burden. This is so even though another fact finder might have

drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The hearing officer's decision and order are affirmed.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge